



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 17, 2014

By Electronic Mail

The Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
500 Pearl Street, Room 725
New York, New York 10007
E-mail: alcarternysdchambers@nysd.uscourts.gov

Re: United States v. Benjamin Durant,
S4 12 Cr. 887 (ALC)

Dear Judge Carter:

The Government, after consultation with defense counsel, submits this letter in advance of the status conferences scheduled for December 18, 2014, to address the recent decision of the Second Circuit in *United States v. Newman and Chiasson*, 13-1837, 13-1917 ("*Newman*").

With respect to Benjamin Durant, who is scheduled to begin trial on January 12, 2015, the Government intends to request a brief adjournment of that trial date, until approximately February 17, 2015. The reason for the requested adjournment is so that the parties can analyze the legal issues presented in *Newman* and submit briefing to the Court as to how those issues may impact this case. Among other issues, Durant is contemplating renewing his motion to dismiss the Indictment based on *Newman*. The Government proposes the briefing schedule set forth below. Counsel for Durant has indicated that they may agree to some adjournment of the trial, but has not yet consented to this particular schedule.

January 5, 2015 – Durant's motion to dismiss the Indictment or other briefing;
January 19, 2015 – Government's response; and
January 23, 2015 – Pretrial conference for oral argument and/or decision.

With respect to Daryl Payton, who pleaded guilty in November 2014, the Government has consulted with defense counsel, who informed the Government that he is considering whether Payton will seek to withdraw his guilty plea in light of the *Newman* decision. The parties propose that any motion to withdraw a plea by Payton proceed on the briefing schedule outlined above. Counsel for Payton has consented to this schedule.

With respect to the other defendants who have pleaded guilty, Thomas Conratt, Trent Martin, and David Weishaus, the Government is in the process of having discussions with

counsel for those defendants. These defendants are evaluating their options given the *Newman* decision, but are not currently filing motions to withdraw their guilty pleas.

Thank you for your consideration of these matters.

Respectfully submitted,

PREET BHARARA
United States Attorney

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cc: All Counsel
(By ECF and Electronic Mail)